

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

OWEN W. BARNABY,  
Plaintiff,

v.

Hon. Robert J. Jonker  
Mag. Sally J. Berens  
Case No. 1:22-cv-01146

NILES CHARTER TOWNSHIP, et al.,  
Defendants.

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**BRIEF IN SUPPORT OF TOWNSHIP DEFENDANTS' REQUEST TO EXTEND TIME  
TO FILE RESPONSE TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

**STATEMENT OF FACTS**

The Defendants Niles Charter Township and the Niles Charter Township Board of Trustees (together the "Township Defendants") was served with a sixty-eight-page Second Amended Complaint with over 100 counts alleged therein on December 8, 2021. The Plaintiff in this case, has filed this lawsuit against twenty-five named defendants, including the Township Defendants, alleging that the named Defendants have all "concocted, disguised, designed an evil plot and an elaborate scheme to defraud Plaintiff of his properties by willful and wanton misconduct, of continuous forgeries and intentional wrongful foreclosure." (R. 10, Page ID. # 163, Paragraph 1.)

The Plaintiff in this case is contesting a foreclosure proceeding against his property located at 2116 S 15th St, Niles, MI 49120 (Tax ID # 11-14-0112-0011-17-4), within Niles Charter

Township, with a judgement of foreclosure entered against him sometime in 2010. (R. 10, Page ID. # 169, Paragraph 24.) The Plaintiff claims that this foreclosure judgement, and all documents used to thereafter sell the property at a tax foreclosure sale and convey the foreclosed property to a new owner were all forged documents used to take and sell the Plaintiff's property without court order and without the Plaintiffs consent. *Id.*

### **ARGUMENT**

Fed. R. Civ. P. 6 (b)(1)(A) states that a court may extend the time for a party to take action for good cause. A request for an extension of time made before expiration of the original deadline "may be 'with or without motion or notice.'" *Lujan v. Nat'l Wildilfe Fed'n*, 497 U.S. 871, 896 (1990).

The Plaintiff in this case has a long history of trying to overturn the tax forfeiture proceedings from 2010. In 2014, the Plaintiff filed in this Honorable Court against Berrien County and the Berrien County Treasurer, in an attempt to set aside the tax foreclosure sale for a number of reasons. *Barnaby v Witkowski*, No 1:14-CV-1279, 2018 WL 387961 (WD Mich Jan 12, 2018), *aff'd*, 758 F App'x 431 (6th Cir 2018). In that case, summary judgement was granted to the defendants based on issues of claim preclusion and collateral estoppel. *Id.* Because of this past litigation history of the Plaintiff, and the voluminous Second Amended Complaint filed by the Plaintiff, the Township Defendants request that this Honorable find good cause to extent the time to file be found in this case so the Township Defendants can fully evaluate the claims contained in the Plaintiff's Second Amended Complaint against them, and determine what the best method of response will be.

The Township Defendants further request that this Honorable Court find good cause to extend the deadline for them to respond to the Plaintiff's Second Amended Complaint based on

the Report and Recommendation from Magistrate Judge, the Honorable Sally J. Berens to dismiss the case based on issues of claim and issue preclusion. The extended deadline to respond to Plaintiff may make a response unnecessary if the case is dismissed prior to the new deadline to respond, thus preventing further use of Township money in having to respond to Plaintiff's long Second Amended Complaint.

The Township Defendants further request expediated consideration of this request, as the deadline to respond to Plaintiff's complaint is currently December 29, 2022.

**RELIEF REQUESTED**

For the reasons stated above, the Township Defendants respectfully request that this Honorable Court grant their request for expediated consideration and further grant their request to extend the time to respond to the Complaint by 28 days, until January 26, 2023.

Respectfully submitted,

BAUCKHAM, THALL  
SEEBER, KAUFMAN & KOCHES, P.C.

DATED: December 29, 2022

BY: /s T. Seth Koches

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